

**F I L E D**

Clerk of the Superior Court

SEP 01 2006

By: K SANDOVAL, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

Coordination Proceeding  
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NOS. 4221, 4224, 4226 and  
4228

The Honorable Ronald S. Prager  
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,  
II, III & IV**

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENTS**

Date: September 1, 2006  
Time: 10:00 a.m.  
Courtroom: Department 71

This Document Relates To:

**THE PRICE INDEXING CASES ONLY**

1 WHEREAS, Plaintiffs' Co-Lead Counsel, on behalf of Plaintiffs and the proposed  
2 Plaintiff Class, and defendants Coral Energy Resources, L.P. ("Coral"), Dynegy Inc., Dynegy  
3 Marketing and Trade, Dynegy Power Marketing, Inc., West Coast Power LLC ( collectively,  
4 "Dynegy"), EnCana Corporation and WD Energy Services, Inc. (collectively, "WD"), and  
5 Williams Companies, Inc. and Williams Power Company, Inc. (collectively, "Williams") (all  
6 collectively, "Settling Defendants") have entered into Settlement Agreements intended to resolve  
7 this litigation against the Settling Defendants and their respective affiliates;

8 WHEREAS, the Settlement Agreements (copies of which are attached hereto as Exhibits  
9 A-D, respectively) set forth the terms and conditions for the proposed settlements and dismissals  
10 of actions against the Settling Defendants and their respective affiliates, with prejudice, upon the  
11 terms and conditions set forth therein;

12 WHEREAS, the Court has before it Plaintiffs' Motion for Preliminary Approval of Class  
13 Action Settlements and Plaintiffs' Memorandum of Points and Authorities in Support of  
14 Preliminary Approval of Class Action Settlements, together with supporting materials;

15 WHEREAS, the Court has heard the attorneys for the parties with respect to the proposed  
16 settlement of these actions;

17 WHEREAS, the Court is satisfied that the settlements set forth in each of the Settlement  
18 Agreements are the result of good faith, arm's-length settlement negotiations among competent  
19 and experienced counsel for both the Plaintiffs and the Settling Defendants; and

20 WHEREAS, the Court has conducted a hearing concerning the reasonableness of  
21 proceeding with the proposed settlements, and good cause appearing therefore, now finds and  
22 orders as follows:

23 **Preliminary Approval of Settlements and**  
24 **Conditional Certification of the Settlement Classes**

25 1. Unless otherwise specified, capitalized terms used in this Order have the  
26 meanings assigned to them in the Settlement Agreements.

27 2. The provisions of the Settlement Agreements are hereby preliminarily  
28 approved, subject to further consideration thereof at the Fairness Hearing provided for below.

1 The Court finds that each settlement is sufficiently within the range of reasonableness that notice  
2 of the proposed settlements should be given as provided in paragraphs 7 and 8 of this Order.

3 3. Pursuant to California Code of Civil Procedure Section 382, the Court  
4 hereby conditionally certifies the following settlement class ("Settlement Class") divided into two  
5 subclasses as follows:

6 All individuals and entities who between January 1, 1999 and  
7 December 31, 2002, inclusive (the "Class Period"), directly or  
8 indirectly purchased natural gas in California and/or at the  
9 California border for use. Excluded from the Settlement Class are:  
10 individuals and entities who purchased natural gas for resale or for  
11 generation of electricity for the purpose of resale (but solely with  
12 respect to the extent of such purchases and not with respect to other  
13 purchases); Defendants and their predecessors, affiliates,  
14 subsidiaries, officers, and directors; federal, state, and local  
15 governments and governmental agencies; any and all judges and  
16 justices assigned to hear any aspect of this litigation, along with  
17 their spouses and any minor children residing in their households;  
18 any persons within the third degree of relationship of any judge or  
19 justice assigned to hear any aspect of this litigation.

14 A. **The Core Natural Gas Subclass**

15 The first subclass is defined as follows:

16 All individuals and entities that purchased natural gas for use from  
17 any source and were or would otherwise have been generally  
18 classified as "core" or "core subscription" natural gas customers by  
19 one or more of California's natural gas utilities, including, without  
20 limitation, Southern California Gas Company, Pacific Gas &  
21 Electric Company, San Diego Gas & Electric Company, City of  
22 Long Beach Energy Department, and Southwest Gas Corporation,  
23 at any time between January 1, 1999 and December 31, 2002.

21 B. **The Non-Core Natural Gas Subclass**

22 The second subclass is defined as follows:

23 All individuals and entities that purchased natural gas for use from  
24 any source and were or would otherwise have been generally  
25 classified as "non-core" natural gas customers (excluding "core  
26 subscription" customers) by one or more of California's natural gas  
27 utilities, including, without limitation, Southern California Gas  
28 Company, Pacific Gas & Electric Company, San Diego Gas &  
Electric Company, City of Long Beach Energy Department, and  
Southwest Gas Corporation, or who otherwise purchased natural  
gas pursuant to contract, at any time between January 1, 1999 and  
December 31, 2002.

1           4.       For settlement purposes only, certification of the proposed settlement class  
2 is appropriate under California Code of Civil Procedure § 382. The Court has considered the  
3 pleadings and arguments of Plaintiffs' counsel in support of the motion for preliminary settlement  
4 approval, and finds that the Settlement Class and Subclasses are proper and should be  
5 conditionally certified, for settlement purposes only, in the circumstances of this case.  
6 Specifically, the Court finds that, for settlement purposes only, there is an ascertainable class and  
7 a community of interest among the members of the Class and within each of the two Subclasses.  
8 Certification of the Settlement Class and Subclasses for settlement purposes is the best means for  
9 protecting the interests of all members of the Class and Subclasses.

10           5.       (a)     The Court finds for the purposes of settlement only that: (i) the  
11 members of the Settlement Class are so numerous that joinder would be impractical; (ii) there is a  
12 commonality of interests among the members of the Settlement Class; (iii) there are questions of  
13 law and fact that are common to the Settlement Class, and the common questions predominate  
14 over individual questions; (iv) plaintiffs' claims are typical of the claims of absent Settlement  
15 Class members; and (v) Plaintiffs will fairly and adequately represent the interests of the absent  
16 Settlement Class members.

17           (b)     The Court finds for the purposes of settlement only that: (i) the  
18 members of the Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii)  
19 there is a commonality of interests among the members of the Core National Gas Subclass; (iii)  
20 there are questions of law and fact that are common to the Core National Gas Subclass, and the  
21 common questions predominate over individual questions; (iv) the claims of plaintiffs Mark and  
22 Susan Benscheidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale  
23 Foods, Inc., Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema  
24 Silverman, Tom and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence  
25 Uyeda, and Vittice Corporation are typical of the claims of absent Core Natural Gas Subclass  
26 members; and (v) these plaintiffs will fairly and adequately represent the interests of the absent  
27 Core Natural Gas Subclass members.

1 (c) The Court finds for the purposes of settlement only that: (i) the  
2 members of the Non-Core Natural Gas Subclass are so numerous that joinder would be  
3 impractical; (ii) there is a commonality of interests among the members of the Non-Core Natural  
4 Gas Subclass; (iii) there are questions of law and fact that are common to the Non-Core Natural  
5 Gas Subclass, and the common questions predominate over individual questions; (iv) the claims  
6 of plaintiffs A.L. Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-  
7 Core Natural Gas Subclass members; and (v) these plaintiffs will fairly and adequately represent  
8 the interests of the absent Non-Core Natural Gas Subclass members.

9 6. (a) The Court conditionally appoints plaintiffs Mark and Susan  
10 Benschmidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,  
11 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom  
12 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice  
13 Corporation as representatives of the Settlement Class and the Core Natural Gas Subclass. The  
14 Court further finds that Lieff, Cabraser, Heimann & Bernstein, LLP will adequately represent the  
15 interests of the Settlement Class and the Core Natural Gas Subclass, and conditionally appoints  
16 the firm to serve as Co-Lead Settlement Class Counsel and Lead Settlement Subclass Counsel for  
17 the Core Natural Gas Subclass.

18 (b) The Court conditionally appoints plaintiffs plaintiffs A.L. Gilbert  
19 Company and H&M Roses, Inc. as representatives of the Settlement Class and the Non-Core  
20 Natural Gas Subclass. The Court further finds that Engstrom Lipscom & Lack will adequately  
21 represent the interests of the Settlement Class and the Non-Core Natural Gas Subclass, and  
22 conditionally appoints the firm to serve as Co-Lead Settlement Class Counsel and Lead  
23 Settlement Subclass Counsel for the Non-Core Natural Gas Subclass.

24 (c) The Court appoints the members of the Plaintiffs' Executive  
25 Committee as additional Settlement Class Counsel:

26 Saveri & Saveri Inc.

27 Girard, Gibbs and De Bartholomeo, LLP

28 Damrell, Nelson, Schrimp, Pollias, Pacher & Silva

1 Zelle, Hoffman, Voebel, Mason & Gette LLP

2 Krause & Kalfayan

3 Jenkins & Mulligan

4 Parish & Small

5 Baker, Burton & Lundy, P.C.

6 Murray & Howard

7 Kiesel, Boucher & Larson

8 (d) If the Settlement Agreements are terminated or are not  
9 consummated for any reason whatsoever, the conditional certification of the Settlement Class  
10 shall be void with respect to any terminated settlement; the Settling Defendant(s) shall have  
11 reserved all their rights to oppose any and all class certification motions and to contest the  
12 adequacy of the class plaintiffs as representatives of any putative plaintiff class or subclass.

13 **Notice to Settlement Class Members**  
14 **and Appointment of the Settlement Administrator**

15 7. On or before October 11, 2006 (the "Notice Date"), Co-Lead Settlement  
16 Class Counsel shall cause to be published a notice, substantially in the form attached as Exhibit B  
17 to the Declaration of Andrew Novak in Support of Plaintiffs' Motion for Preliminary Approval of  
18 Proposed Class Action Settlements ("Novak Declaration") in the publications listed in the Notice  
19 Program attached as Exhibit A to the Novak Declaration ("Publication Notice"). Prior to the  
20 Fairness Hearing, plaintiffs shall serve and file a sworn statement attesting to compliance with the  
21 provisions of this paragraph.

22 8. On or before the Notice Date, the Settlement Administrator (defined  
23 below) shall cause copies of the notice, substantially in the form attached hereto as Exhibit C to  
24 the Novak Declaration ("Mail Notice") to be mailed by first class U.S. mail, postage pre-paid, to  
25 the lists of Non-Core Natural Gas Subclass members provided by natural gas utilities. The  
26 Settlement Administrator shall also cause copies of the Mail Notice to be mailed by first class  
27 U.S. mail, postage pre-paid, to any member of the Settlement Class who so requests via the toll-  
28 free telephone number established for that purpose. Prior to the Fairness Hearing, the Settlement

1 Administrator shall serve and file a sworn statement attesting to compliance with the provisions  
2 of this paragraph.

3 9. In addition, Co-Lead Settlement Class Counsel shall cause to be  
4 established a website, identified in the Publication Notice and the Mail Notice, at which shall be  
5 posted: (a) the Mail Notice; (b) the Master Class Action Complaint; (c) the Settlement  
6 Agreements; (d) this Order; (e) the papers filed in support of final approval of the settlements and  
7 the application for attorneys' fees and reimbursement of expenses; and (f) any other pleadings or  
8 papers that Co-Lead Settlement Class Counsel deem appropriate.

9 10. The notice to be provided as set forth in the preceding three paragraphs is  
10 hereby found to be the best means practicable of providing notice under the circumstances and,  
11 when completed, shall constitute due and sufficient notice of the proposed settlements and the  
12 Fairness Hearing to all persons and entities affected by and/or entitled to participate in the  
13 settlement approval process, in full compliance with due process and the notice requirements of  
14 California Code of Civil Procedure Section 382.

15 11. Co-Lead Settlement Class Counsel are authorized to retain Poorman  
16 Douglas Corporation as the Settlement Administrator in accordance with the terms of the  
17 Settlement Agreements and this Order. The Settlement Administrator shall preserve any and all  
18 written communications from members of the Settlement Class until December 1, 2011, subject  
19 to further order of the Court. Copies of all written communications received by the Settlement  
20 Administrator from members of the Settlement Class relating to the proposed settlements shall  
21 promptly be furnished to Co-Lead Settlement Class Counsel and the Settling Defendants.

22 **Requests for Exclusion from the Settlement Classes**

23 12. Any member of the Settlement Class wishing to be excluded from the  
24 Settlement Class (i.e., to become an "Opt-Out") must have postmarked on or before November  
25 15, 2006 (the "Opt-Out Deadline") a request for exclusion addressed to the Settlement  
26 Administrator at the address provided in the Mail Notice which states the class member's full  
27 legal name and address, states that the Opt-Out wishes to be excluded from the Settlement Class,  
28 and is signed by the Opt-Out. If the Opt-Out is an entity (as opposed to a natural person), the

1 request for exclusion must also contain a statement that the signatory is authorized to sign a  
2 request for exclusion on behalf of the Opt-Out. Additionally, if the person requesting exclusion is  
3 a member of the Non-Core Natural Gas Subclass, the request for exclusion must also include the  
4 address(es) at which the subclass member had non-core natural gas service during the Class  
5 Period.

6 13. Upon receipt, the Settlement Administrator shall promptly provide copies  
7 of each request for exclusion to Co-Lead Settlement Class Counsel, and to counsel for the  
8 Settling Defendants. Within 7 calendar days after the Opt-Out Date, the Settlement Administrator  
9 shall send via electronic mail or other method approved by the parties to the Settlement  
10 Agreements (through their counsel) to Co-Lead Settlement Class Counsel, and counsel for the  
11 Settling Defendants, a complete and final list of those persons or entities who have requested  
12 exclusion from each of the Settlement Subclasses, along with copies of all requests for exclusion  
13 that have been received.

14 14. Any member of the Settlement Class not properly and timely requesting  
15 exclusion from the Settlement Class shall be included in the Settlement Class and in either or both  
16 subclasses and, upon final approval of the Settlement Agreements, shall be bound by all the terms  
17 and provisions of each Agreement, including but not limited to the releases, waivers and  
18 covenants described in the Settlement Agreements, whether or not the class member objected to  
19 the settlement and whether or not such person made a claim upon, or participated in, any of the  
20 settlement funds created pursuant to the Settlement Agreements.

#### 21 **The Fairness Hearing**

22 15. A hearing on final settlement approval (the "Fairness Hearing") is hereby  
23 scheduled to be held before this Court on December 11, 2006, at 10:00 a.m. in Department 71 to  
24 consider the fairness, reasonableness, and adequacy of the Settlement Agreements, the entry of  
25 final judgment in the Class Actions with respect to the Settling Defendants, and plaintiffs'  
26 counsel's application for attorneys' fees, reimbursement of expenses, and incentive awards to the  
27 named plaintiffs.



1           16. Pending the Fairness hearing, all members of the Settlement Class are  
2 enjoined from commencing or prosecuting any claims that are the subject of the Settlements other  
3 than in connection with this action.

4           17. Briefs and other papers in support of Plaintiffs' motion for final approval  
5 and plaintiffs' counsel's application for attorneys' fees shall be filed on or before November 6,  
6 2006. Reply briefs and other papers responding to any objections to the proposed settlements and  
7 attorneys' fee application shall be filed on or before November 29, 2006.

8           18. Any person who does not elect to be excluded from the Settlement Class  
9 may, but need not, enter an appearance through his or her own attorney. Settlement Class  
10 members who do not enter an appearance through their own attorneys will be represented by  
11 Settlement Class Counsel.

12           19. Any person who does not elect to be excluded from the Settlement Class  
13 may, but need not, submit comments or objections to the proposed settlement. All such  
14 comments or objections and any supporting papers must be filed with the Clerk of the Court, in  
15 writing, on or before the Opt-Out Deadline; must contain the caption *Natural Gas Antitrust Cases*  
16 *I-IV, JCCP Nos. 4221, et al.*; and copies of all such papers must be postmarked or otherwise  
17 dispatched for delivery to the following on or before the Opt-Out Deadline:

18           Barry R. Himmelstein  
19           Lieff, Cabraser, Heimann & Bernstein, LLP  
20           Embarcadero Center West  
21           275 Battery Street, 30th Floor  
22           San Francisco, CA 94111-3339

23           *Co-Lead Counsel for the Settlement Class*

24           Jeffrey M. Shohet  
25           DLA Piper Rudnick Gray Cary US LLP  
26           401 B Street, Suite 1700  
27           San Diego, CA 92101-4297

28           *Liaison Counsel for Settling Defendants*

          20. Attendance at the Fairness Hearing is not necessary; however, persons  
wishing to be heard at the Fairness Hearing are required to file written comments or objections  
and indicate in their written comments or objections their intentions to appear at the hearing.

1 Settlement Class members need not appear at the hearing or take any other action to indicate their  
2 approval of the settlement.

3 21. The date and time of the Fairness Hearing shall be set forth in both forms  
4 of notice, but shall be subject to adjournment by the Court without further notice to the members  
5 of the Settlement Class other than that which may be posted at the Court.

6 **Other Provisions**

7 22. A Settlement Fund shall be established and administered pursuant to the  
8 terms of the Settlement Agreements. No distributions shall be made from the Settlement Fund  
9 unless authorized under the Settlement Agreements and ordered by this Court.

10 23. The Court hereby orders that all reasonable costs incurred in notifying  
11 members of the California Settlement Classes shall be paid as set forth in the Settlement  
12 Agreements.

13 24. Nothing in this Order shall be construed to expand the obligations of the  
14 Settling Defendants under the Settlement Agreements or to impose obligations on them other than  
15 those contained in the Settlement Agreements.

16 SO ORDERED, this 1st day of September, 2006.

17 

18 Hon. Ronald S. Prager  
19 Coordination Trial Judge  
20 Superior Court of the State of California